

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-009700

03/22/2012

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nixon
Deputy

GEORGE IKNADOSIAN, et al.

THOMAS M BAKER

v.

AIMEE SMITH, et al.

CHRISTINA E KOEHN

MICHELE M IAFRATE

RULING

Having read and considered the briefing on Defendants State of Arizona and Terry Goddard's (collectively with Alex Mahon, "State Defendants") Motion to Dismiss and having heard oral argument, the Court issues the following rulings.¹

Immunity.

1. Prosecutorial.

State Defendants argue they are entitled to absolute prosecutorial immunity. *Grimm v. Ariz. Bd. of Pardons & Paroles*, 115 Ariz. 260, 265 (1977) (no absolute immunity for public officials performing discretionary functions "other than true judicial proceedings"), *overruling* *Stone v. Ariz. Highway Comm'n*, 93 Ariz. 384 (1963); *Imbler v. Pachtman*, 424 U.S. 409, 422 (1976); *see also Butz v. Economou*, 438 U.S. 478, 516-17 (1978) (absolute prosecutorial immunity extends to civil enforcement proceedings). Plaintiffs do not take issue with

¹ Defendants City of Phoenix and Aimee Smith (collectively, "City Defendants") also moved to dismiss. *See* Oct. 3, 2011 Minute Entry (ruling on lack of specificity and Plaintiffs' Motion for Leave to Amend Complaint). The Court addresses the issues raised by State Defendants' Motion to Dismiss as those issues relate to Plaintiffs' Second Amended Complaint.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-009700

03/22/2012

prosecutorial immunity as a matter of common law; rather, Plaintiffs argue this common law immunity is limited by A.R.S. § 13-4314(E).² The Court agrees.

The Arizona Constitution confers express authority on the Legislature “to define those instances in which public entities and employees are entitled to immunity.” *Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 203 (2001). Thus, principles of common law immunity will apply “in the absence of any statutory direction.” *Id.*, citing *Ryan v. State*, 134 Ariz. 308 (1982). In the context of a forfeiture proceeding, the Legislature has provided that statutory direction.

On entry of judgment for a claimant or claimants in any proceeding to forfeit property under this chapter such property or interest in property shall be returned or conveyed immediately to the claimant or claimants designated by the court. ***If it appears that there was reasonable cause for the seizure for forfeiture or for the filing of the notice of pending forfeiture, complaint, information or indictment, the court shall cause a finding to be entered, and the claimant is not, in such case, entitled to costs or damages, nor is the person or seizing agency that made the seizure, nor is the attorney for the state liable to suit or judgment on account of such seizure, suit or prosecution.***

A.R.S. § 13-4314(E) (emphasis added). A finding of reasonable cause was not entered by either Judge Oberbillig (in *Forfeiture I*) or Judge Myers (in *Forfeiture II*).

In this regard, however, State Defendants argue that § 13-4314(E) must be read in context with A.R.S. § 13-4310(J), which provides:

No person claiming to be an owner of or interest holder in property seized for forfeiture under this chapter may commence or maintain any action against the state concerning the validity of the alleged interest other than as provided in this chapter.

(Emphasis added.) The Court must construe these statutes to give meaning to each of their provisions. *E.g.*, *In re \$3,636.24 U.S. Currency*, 198 Ariz. 504, 505 (App. 2000). Viewed thusly, the Court agrees with Plaintiffs that § 13-4310(J) gives notice that a claimed interest in seized property must be litigated via the forfeiture proceeding. In an *in rem* action taken against

² Plaintiffs do not bring a claim against the Assistant Attorney General who actually prosecuted Iknadosian’s criminal case.

03/22/2012

Page 3

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-009700

03/22/2012

Statute of Limitations; Notice of Claim.

State Defendants' arguments on both issues are premised on an accrual date of May 6, 2008 -- the date of Iknadosian's arrest and the initial seizure of property. *See* A.R.S. §§ 12-821, 12-821.01. *Mayer Unified Sch. Dist. v. Winkleman*, 219 Ariz. 566-67 (2009) (cause of action accrues when party realizes he has been damaged and knows or reasonably should know cause). Plaintiffs contend that, although they may allege and prove State Defendants' involvement on May 6, 2008, they have not alleged a cause of action that accrued before March 19, 2009 -- the date of Iknadosian's judgment of acquittal in CR2008-006471. The Court agrees with Plaintiffs. *See generally* *Overson v. Lynch*, 83 Ariz. 158, 161 (1957) (essential element of claim for malicious prosecution is that prosecution terminate in favor of plaintiff); *Owen v. Shores*, 24 Ariz. App. 250, 251 (1975) (malicious prosecution action filed prior to favorable termination of criminal proceeding is premature). Plaintiffs allege 16 causes of action with a continuum of accrual dates from March 19, 2009 to February 13, 2011. (*See* July 1, 2011 Resp., Ex. 1.) State Defendants do not argue that, if a particular cause of action accrued later than May 6, 2008, it did not accrue on the date Plaintiffs allege, or that a particular notice of claim was untimely filed.

Conclusion.

State Defendants argue that Plaintiffs failed to state a claim with regard to aiding and abetting and conspiracy and intentional infliction of emotional distress. In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court will grant the motion only if Plaintiffs are not entitled to relief "under any facts susceptible of proof in the statement of the claim." *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010), *quoting* *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). The Court finds that Plaintiffs have stated a claim upon which relief can be granted.

State Defendants also argue that A.R.S. § 12-820.04 bars Plaintiffs' claim for punitive damages.⁵ Plaintiffs having failed to address this argument in their Response, the Court finds that Plaintiffs concede the issue.

policy maker concerning the State's position, i.e., where the Attorney General possessed statutory authority to sue without the involvement of a state agency or officer. *Id.* at 179-80. Additionally, the Court notes that Westlaw indicates *Goddard* was vacated pursuant to settlement (Jan. 16, 2008).

⁵ A.R.S. § 12-820.04 provides: "Neither a public entity nor a public employee acting within the scope of his employment is liable for punitive or exemplary damages."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-009700

03/22/2012

Based on the foregoing,

IT IS ORDERED granting State Defendants' Motion to Dismiss (Plaintiffs' claim for punitive damages).

IT IS FURTHER ORDERED denying State Defendants' Motion to Dismiss (all other issues raised).

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.